

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIRST DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO: 4087 of 1999

Between:

N.Venugopala Rao son of late N.L.Narasimha Rao
H.No. 6-1-143, Padmarao Nagar, Secunderabad.

... PETITIONER

AND

- 1 The Zonal Manager (Disciplinary Authority)
L.I.C. of India, Central Office South Central Zonal Officer
Saifabad, Hyd
- 2 The Managing Director
L.I.C. of India, Central Office P.B.No. 199953
Jeevan Bima Marg, Mumbai

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for and peruse the records relating to proceedings dt. 16/12/97 and confirmed vide orders dated 8/12/1998 and quash the same by the issuance of certiorari or any other appropriate Writ, order or direction of the like nature and pass such other order or further orders with all consequential benefits as this Hon'ble court may deem fit and proper in the circumstances of the case.

For the Petitioner: MR.M.KESAVA RAO, Advocate

For the Respondent: MR.D.V.SITARAMAMURTHY

The Court Made the Following Order:

W.P.NO.4087 OF 1999

ORDER:

The petitioner, while serving as an Assistant Administrative Officer at Nampally branch in the Life Insurance Corporation (LIC) was suspended pending enquiry on 09-03-1994, on the ground that he was in detention for more than forty-eight hours. The detention was the consequence of a complaint by the Senior Branch Manager of the LIC regarding missing of cash of Rs.1,23,300/- from the cash box to which the petitioner admittedly had a key - one of the two keys. On the operation of both of them alone, the cash box could be opened. During the pendency of the criminal proceedings, a charge memo dated 17-09-1994 was issued *inter alia* alleging that the petitioner had misappropriated Rs.1,23,300/- from the cash box kept in the safe, a conduct, which also amounts to theft, that this theft was committed on 01-03-1994, that the safe and cash box were opened with the help of duplicate keys obtained from the box and that therefore the petitioner must be considered as having caused financial loss to the LIC. The petitioner submitted his explanation to the charge memo. An Enquiry Officer and Presenting Officer were appointed on 22-11-1994 and after a due process of enquiry in which the petitioner participated, an Enquiry Report dated 23-12-1995 was submitted by the enquiry officer to the disciplinary authority. By an order dated 16-12-1997 of the disciplinary authority – the Zonal Manager, the petitioner was imposed the penalty of dismissal from service besides recovery of the financial loss of Rs.1,23,300/-, while treating the period of suspension from 07-03-1994 till the date of the dismissal order as period spent not on duty. The 1st respondent – disciplinary authority's order dated 16-12-1997 itself recorded that the show cause notice issued to the petitioner after receipt of the report from the enquiry officer was sent to the petitioner, but was returned 'un delivered' by the postal authorities. It is also recorded that a copy of the show cause notice and the accompanying enquiry report were displayed on the notice board of the City Branch, Hyderabad during the period 23-03-1996 to 30-03-1996.

Earlier, on 12-03-1997, the petitioner who was chargesheeted for an offence under Section 406 of the Indian Penal Code was acquitted in C.C.No.114/95.

The petitioner preferred an appeal on 31-01-1998 to the second respondent against the dismissal order dated 16-07-1997. *Inter alia* the petitioner's complaint in the appeal was that he was not served with the copy of the enquiry report before the order of dismissal was passed. In response to this complaint in the appeal of the petitioner, the second respondent, by a communication dated 09-06-1998 again communicated copies of the show cause notice dated 29-01-1996 and the enquiry report dated 23-12-1995 to enable the petitioner to make any further submissions in the appeal, after going through the enquiry report. He was afforded further time of 15 days to make such submissions. The copy of the enquiry report was received by the petitioner on 16-06-1998 along with the letter dated 09-06-1998 of the second respondent.

On 25-06-1998, the petitioner made detailed additional submissions in support of his earlier appeal dated 31-01-1998. The Appellate authority having considered the entire record of the case, including the additional submissions made by the petitioner on 25-06-1998, dismissed the appeal by an order dated 08-12-1998. The petitioner submitted a further memorial to the Chairman of the LIC on 16-07-1999 in terms of Regulation 49 of the Applicable Regulations. On 04-02-2000, a personal hearing was afforded to the petitioner by the Chairman of the corporation and finally, by a reasoned order dated 15-03-2000, the memorial was also dismissed.

Two submissions are urged on behalf of the petitioner by the learned counsel Sri M.Kesava Rao:

- a. that he was not furnished with a copy of the enquiry report before the dismissal order dated 16-12-1997

was passed and therefore principles of natural justice are violated;

- b. that the conclusion as to the petitioner's guilt recorded in the enquiry report dated 23-12-1995 which found favour with the disciplinary authority and which resulted in the dismissal order dated 16-12-1997, is perverse and based on no evidence.

Insofar as the first contention is concerned, in the considered view of this Court, this contention has no merit in the light of the facts and circumstances of the case. Principles of natural justice have flexible trajectory. The *audi alteram partem* principle is intended to afford a fair and reasonable opportunity to a person who is likely to be potentially impacted with civil consequences, to participate in the proceedings qua which, such civil consequences might be brought about. There is no inherent merit in a mere ritualistic compliance with the principle of *audi alteram partem*. The respondents have sent the enquiry report along with the show cause notice to the petitioner to his known residential address, but the postal authorities had returned the communication with the endorsement "party not found". Thereupon, the order of dismissal was passed. Responding to the petitioner's complaint, in his appeal dated 31-01-1998 that he was not served with the copy of the enquiry report, the appellate Authority on 09-06-1998 again communicated the show cause notice dated 29-01-1996 and the enquiry report dated 23-12-1995 which was received by the petitioner on 16-06-1998. On receipt of this enquiry report along with the show cause notice, the petitioner submitted additional grounds in his earlier appeal dated 31-01-1998. The Appellate authority duly considered all the submissions made by the petitioner including the additional submissions dated 25-06-1998,

but, nevertheless confirmed the conclusions of the disciplinary authority with regard to the guilt of the petitioner. In the ultimate analysis, therefore, the non-communication of the enquiry report prior to the passing of the order by the disciplinary authority was cured by an opportunity provided to the petitioner at the appellate stage. Earlier non-communication of the enquiry report is not a conscious withholding of the enquiry report by the disciplinary authority, but a failure to communicate the same by another process after the initial process of communication by post failed. The fact of the matter is that enquiry report was displayed in the notice board and the petitioner could have availed the opportunity of perusing the same. Of course, the petitioner makes a complaint that he was not permitted to enter the office after his dismissal from service. There is no substantiation of this grievance. In any event, the irregularity in the non-communication of the enquiry report at the primary stage can be said to have been cured by the furnishing of the enquiry report to the petitioner at the appellate stage. The petitioner, has, in any case, not eventually suffered any serious prejudice on account of the opportunity having been provided at the appellate stage.

The contention that the conclusion in the enquiry report, which was confirmed by the disciplinary authority, is based on no evidence is fundamentally mis-conceived. A perusal of the enquiry report discloses that there was abundant material, oral and documentary for the conclusion that the petitioner was the only person having access to Key No.1. He was present in the office on the crucial dates, viz., 26th and 27th of February, 1994 even beyond office hours. He had access to the chambers of the Senior Branch Manager as well as the second key which was in the office drawer of PW-2, the Administrative Officer. The duplicates to the drawer of PW-2's table were found in the custody of the petitioner, in his table drawer. This was revealed in the Panchanama conducted. The enquiry report also recorded, on the basis of ample evidence, that the petitioner who was financially distressed, having his salary

attached and having a very negligible balance in his bank account at Andhra Bank, Nampally branch and Central Bank of India, Khairatabad branch, was found to have deposited Rs.98,950/- into his account in the Central Bank of India, Khairatabad branch at about 11.30 A.M on 28-02-1994. The petitioner had abstained from duty in the LIC office on 28-02-1994 at about 10.10 A.M. He left without any information along with Key No.1, which was with him. On a rational analysis of all these events, the enquiry officer concluded that the petitioner was guilty as charged. The standard of proof in a departmental enquiry is not that warranted in a prosecution. Preponderance of probabilities is an adequate standard by which it is permissible to arrive at a conclusion of guilt. On the application of this relevant standard of proof, it cannot be held that the conclusion as to the petitioner's guilt is perverse or irrational. The conclusion is also not vitiated as being bereft of any evidence.

Another contention urged by the learned counsel for the petitioner Sri Kesava Rao is that the petitioner had put in 28 years of impeccable service, and therefore, the extreme penalty of dismissal from service for a single species of mis-conduct should be considered as shockingly disproportionate.

As this Court finds no infirmity in the conclusion of the disciplinary authority as confirmed by the appellate authority, it finds no warrant to conclude that the punishment is shockingly disproportionate. The petitioner has been found guilty of misappropriation of the funds of a public corporation. Such misconduct is one of grave nature. Condign punishment is warranted and the punishment of dismissal is proportionate to the guilt of the petitioner, validly found.

On the analysis above, this Court finds no merits in the Writ Petition. The Writ Petition is accordingly dismissed. No costs.

(GODA RAGHURAM, J)

July 1, 2004

MRR

Copy to:

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